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January 22, 2020

**VIA ECF FILING**

Hon. Lorna G. Schofield, U.S.D.J.  
United States District Court for the Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007

Re: *United States of America ex rel. Michael I. Levine, M.D. v. Vascular Access Centers, L.P., et al.*, Docket No. 12-cv-05103(LGS) (S.D.N.Y.)

Dear Judge Schofield:

I write on behalf of Defendants Robert Matalon, M.D., Daniel Matalon, M.D., and Albert Matalon, M.D. (collectively, the "Matalon Defendants") and with the consent of Relator Michael I. Levine, M.D. ("Relator") and Defendant Joseph Shams, M.D. ("Dr. Shams") to present the Court with a joint status update on this action, as required by Paragraph 13.b of the Civil Case Management Plan and Scheduling Order [D.E. 171] and Rule IV.A.2 of the Court's Individual Rules and Procedures for Civil Cases.

**A. Discovery**

On November 6, 2019, the Court stayed discovery until further Order, but at least through the resolution of the pending motions to dismiss [D.E.190]. Prior to the Court's stay of discovery, the parties engaged in the following discovery:

- On September 24, 2019, Relator, Dr. Shams, and the Matalon Defendants each served Rule 26(a)(1) initial disclosures on all parties.
- On September 18, 2019, Relator served Dr. Shams with a first request for the production of documents. On September 23, 2019, Relator served Dr. Shams with an amended first request for the production of documents and a first set of interrogatories. On November 6, 2019, Dr. Shams served Relator with written objections and responses to the amended first request for the production of documents and to the first set of interrogatories.
- On September 28, 2109, Relator served Dr. Shams with a second request for the production of documents. On November 6, 2019, Dr. Shams served Relator with written objections and responses to the second request for the production of documents.

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- On September 28, 2109, Relator served each of the Matalon Defendants with a first request for the production of documents. On October 28, 2019, each of the Matalon Defendants served Relator with written objections and responses to the first request for the production of documents.
- On October 28, 2019, the Matalon Defendants served Relator with a first set of interrogatories and a first request for the production of documents.
- On October 28, 2019, Dr. Shams served Relator with a first set of interrogatories and a first request for the production of documents.
- On November 1, 2019, Relator served all parties with a deposition notice for Dr. Shams and each of the Matalon Defendants.
- On or about October 4, 2019, Relator served a subpoena on the Custodian of Records for Beth Israel Mount Sinai calling for testimony and the production of documents. On September 30, 2019, Relator served all parties with a deposition notice for the Custodian of Records for Beth Israel Mount Sinai.
- On or about October 3, 2019, Relator served a subpoena on the Custodian of Records for Advanced Vascular Care calling for testimony and the production of documents. On September 30, 2019, Relator served all parties with a deposition notice for the Custodian of Records for Advanced Vascular Care.

Given the stay of discovery, no party or non-party has produced any documents in this action. Similarly, to date, no depositions have been conducted in this action.

**B. Procedural History**

On or about June 28, 2012, Relator filed the original complaint [D.E. 29] against twenty-five defendants under seal pursuant to the qui tam provisions of the False Claims Act. On October 17, 2018, the Court lifted the seal [D.E. 26]. On October 22, 2018, the United States filed a complaint-in-intervention [D.E. 30] with respect to the claims asserted against “VASCULAR ACCESS CENTERS, L.P., and each of its subsidiary and/or related corporations” and settled with these defendants (also resulting in the dismissal of two other defendants in this action) [D.E. 27, 28]. Relator thereafter advised this Court of his intention to pursue claims against all remaining defendants with one exception [D.E. 36], but has since voluntarily dismissed as against all but four defendants – Dr. Shams and the Matalon Defendants.

On August 5, 2019, Relator filed the amended complaint [D.E. 160] (and twice subsequently refiled the amended complaint [D.E. 161, 163] to address electronic filing issues). On October 25, 2019, Relator

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filed a corrected amended complaint [D.E. 184] (and twice subsequently refiled the corrected amended complaint [D.E. 185, 186] to address electronic filing issues) to remove the State of New York as a plaintiff.

On October 21, 2019, Relator filed a consent motion for the entry of a Stipulated Confidentiality Agreement and Protective Order [D.E. 172, 173]. On October 22, 2019, the Court so-ordered the Stipulated Confidentiality Agreement and Protective Order with minor modification [D.E. 174].

On October 24, 2019, Dr. Shams and the Matalon Defendants each filed a motion pursuant to Rule 12(b) of the Federal Rules of Civil Procedure seeking dismissal of the action as against them [D.E. 176, 180]. Pursuant to the Court's September 10, 2019 Order [D.E. 170], Relator filed opposition to the Matalons Defendants' motion on November 25, 2019 and the Matalon Defendants filed reply papers in further support on December 13, 2019. Pursuant to the Court's September 10, 2019 Order [D.E. 170] as amended by the Court's December 11, 2019 Order [D.E. 195], Relator filed opposition to Dr. Shams' motion on November 25, 2019 and Dr. Shams filed reply papers in further support on December 18, 2019. Both motions remain sub judice before the Court.

On November 1, 2019, the Matalon Defendants and Dr. Shams filed a letter-motion to stay discovery [D.E. 187]. Relator responded to the motion on November 4, 2019 [D.E. 188] and the Court granted the motion on November 6, 2019 [D.E.190].

In addition to the above, the parties have also made various other letter applications seeking various types of procedural relief, including by way of example, but not limited to, leave to appear telephonically [D.E. 40], the adjournment of a conference date [D.E. 66], the extension of certain deadlines [D.E. 127], and pro hac vice admission [D.E. 155]. No such letter applications remain pending at this time.

**C. Plan to Meet Court-Ordered Discovery Deadlines**

Discovery has been stayed pursuant to this Court's November 6, 2019 order. Should the Court decline to grant the pending motions to dismiss and set new deadlines for discovery, the parties will confer at that time to ensure that they meet all Court-ordered discovery deadlines.

**D. March 10, 2020 Pre-Motion Conference and Attendant Submission**

Pursuant to Paragraph 13.c of the Civil Case Management Plan and Scheduling Order [D.E. 171], the Court has scheduled a pre-motion conference for March 10, 2020 to address any anticipated dispositive motions, with the parties required to submit pre-motion conference letters two weeks in advance thereof (i.e. by February 25, 2020). In light of the pending stay on discovery and the need to re-schedule discovery deadlines if the Court determines not to grant the pending motions to dismiss, the parties collectively request that the March 10, 2020 conference and attendant February 25, 2020 letter submission deadline be adjourned sine die.

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The Court's time and attention to this matter is appreciated.

Very truly yours,  
RIVKIN RADLER LLP

/s/ Brian L. Bank  
Brian L. Bank

cc: All counsel for record (via ECF)